FEDERAL WATER POLLUTION CONTROL ACT—MODIFICATION OF CERTAIN EFFLUENT LIMITATIONS

SEPTEMBER 23, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 7159]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 7159) to amend the Federal Water Pollution Control Act to allow modifications of certain effluent limitations relating to biochemical oxygen demand and pH, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

INTRODUCTION

H.R. 7159 authorizes the Administrator of the Environmental Protection Agency to modify the requirements for best practicable and best conventional treatment technology, in very limited circumstances, in order to address a problem which has arisen with regard to two pulp mills in the State of California.

The mills are located on the California coast west of the northern California town of Eureka. They discharge their effluent into deep Pacific Ocean waters in an area of strong currents and turbulent conditions through separate outfalls about a half mile long.

In 1977 pursuant to section 301(b) of the Federal Water Pollution Control Act, the Environmental Protection Agency issued effluent limitations for different types of bleached kraft pulp, paper, and paperboard mills discharging into navigable waters. These regulations impose discharge limits based on the application of the best practicable control technology currently available. The two mills involved sought a variance from these discharge limits from the State of California,

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which was administering its own permit program under section 402 of the act, for biochemical oxygen demand and pH. On March 17, 1977, the water quality control board of the State of California granted the requested variance. In so doing, the State board concluded, among other things, that neither the discharge of BOD nor pH resulted in a discernible impact or threat of damage to the marine environment.

In September 1977 the Administrator of the Environmental Protection Agency vetoed the State discharge permits and denied the variance requests. This decision was upheld by the courts. For the past year a coalition of industry, environmental, consumer, local government, and citizens groups has been working together to seek a solution to the problem brought about the EPA decision. Administrative relief under the Federal Water Pollution Control Act has been sought but does not appear to be available. Therefore, a legislative solution appears necessary.

H.R. 7159 has been drafted very narrowly so that it applies only to the unique set of circumstances involved in the case of the two mills. It is not to be construed as a change in overall committee policy nor as setting a precedent. The committee wishes to emphasize that it fully supports the goals, objectives, and requirements of the Federal Water Pollution Control Act.

The committee reaffirms its commitment to the basic approach of the Federal Water Pollution Control Act of uniform national technology-based standards for industrial discharges. The committee will oppose any efforts to extend section 301(h) of the act, which relates to ocean discharge modification from secondary treatment for publicly owned sewage treatment plants, to industrial facilities. Application of section 301(h) to industrial facilities which are subject to competitive pressures would undercut the whole thrust of the act's industrial regulatory program, and give unfair advantages to coastal industries. This bill is intended to resolve a unique and extreme situation. The committee regards the industrial regulatory program as one of the most successful aspects of the Federal Water Pollution Control Act and will strongly resist any tampering with it. This legislation should not be regarded as an opening wedge in the law, but as an extremely limited adjustment which will allow the basic uniform industrial discharge standards program to continue without significance change.

DESCRIPTION OF THE BILL

H.R. 7159 authorizes the Administrator of the Environmental Protection Agency with the concurrence of the State to issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements for best practicable and best conventional technology with respect to effluent limitations relating to biochemical oxygen demand and pH from discharges by an industrial discharger in the State into deep waters of the territorial seas.

The applicant must demonstrate to the satisfaction of the Administrator that:

(1) On or before March 17, 1977, the State had received authority from the U.S. Environmental Protection Agency to administer its own permit program under section 402 and the applicant had received approval from the appropriate agency of the

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State for the modifications requested in the permit applied for under the provisions of H.R. 7159;

(2) The economic and environmental costs of meeting the best practicable and best conventional technology requirements and the section 403 ocean discharge criteria exceed the benefits to be obtained by an unreasonable amount;

(3) The applicant has established a system for monitoring the impact of such discharges on a representative sample of acquatic biota;

(4) The modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above the volume of discharge specified in the permit; and

(6) The discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with the provisions of H.R. 7159 and section 101(a)(2) of the act, which establishes the national goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife.

The committee notes that subsection 301(m)(1)(c) requiring a monitoring program to the extent practicable is intended to mandate state of the art monitoring for deep ocean discharges and must be sufficient to ensure that the factors enumerated in paragraphs (m)(2) and (m)(4) can be properly evaluated.

Subsection (m)(1)(A) of the bill is intended to make clear the limited circumstances under which this provision would apply. Only point sources located in States that had an EPA approved NPDES permit program under section 402 of the act on or before March 17, 1977, qualify. Thus point sources in States without EPA authorization to issue NPDES permits under the act or States which received such authorization after March 17, 1977, are not entitled to modified NPDES permits under the bill.

The effluent limitations established under a permit issued under paragraph (1) of subsection 301(m) shall, in the view of the Administrator, be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies, and protect the propogation of a balanced indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms and to allow recreational activities in and on the water. The Administrator in setting the limitations must take into account seasonal variations and the need for an adequate margin of safety considering the lack of essential knowledge of the relationship between effluent limitations and water quality and the effects of discharges on beneficial uses of the receiving waters.

Permits issued under new subsection (m) may be issued for a maximum term of 5 years and may be renewed for additional periods each not to exceed 5 years upon demonstration by the applicant that the provisions of the subsection are met.

Finally, the Administrator may terminate a permit issued under the subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown.

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Compliance With Clause 2(l) of Rule XI of the Rules of the House of Representatives

(1) With reference to clause 2(l)(3)(A) of rule XI of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the subject matter of the legislation.

(2) With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 7159, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to Section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. That report is as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 23, 1982.

Hon. James J. Howard,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7159, a bill to amend the Federal Water Pollution Control Act to allow modifications of certain effluent limitations relating to biochemical oxygen demand and pH, as ordered reported by the House Committee on Public Works and Transportation.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

(4) With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 7159, as reported, is negligible with respect to prices and costs.

Cost of Legislation

Clause 7(a) of ruleXIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 7159, as reported, in Fiscal Year 1982, and each of the following five years. However, under paragraph (d) of clause 7 its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

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Committee Action and Vote

The Committee, in compliance with rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 7159. The Committee ordered the bill reported by voice vote.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic; existing law in which no change is proposed is shown in roman):

Section 301 of the Federal Water Pollution Control Act

EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

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(m)(1) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 403, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates to the satisfaction of the Administrator that—

(A) on or before March 17, 1977, the State had authority to administer its own permit program under section 402 and the applicant had received approval from the appropriate agency of such State for the modifications requested in the permit applied for under this subsection;

(B) the economic and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) and section 403 by any unreasonable amount the benefits to be obtained, including the objectives of this Act;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota, to the extent practicable;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit; and

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 101(a)(2) of this Act.

(2) The effluent limitations established under a permit issued under paragraph (1) shall, in the view of the Administrator, be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife and other equatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for additional periods not to exceed five years each upon a demonstration by the by the applicant to the satisfaction of the Administrator at the time of application for any such renewal that the provision of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown.

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